

M-5

Answer of Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR
UTAH COUNTY, STATE OF UTAH

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PROVO RESERVOIR COMPANY,
a corporation,

Plaintiff,

Cross Complaint
and

ANSWER OF DEFENDANT

vs.

UTAH-IDaho SUGAR COMPANY

PROVO CITY ET AL.,

Defendants.

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Now comes the defendant, Utah-Idaho Sugar Company, and answering the complaint herein, admits, denies, and avers, as follows, to-wit:

I. Admits the allegations of paragraphs numbered from 1 to 26, both inclusive, and paragraph 28 of the complaint;

II. Avers that it has no knowledge or information sufficient to enable it to answer the allegations of paragraph 27 and of paragraphs numbered from 29 to 39, both inclusive, and therefore denies each and every allegation contained in the said paragraphs;

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For a further answer and as a cross-complaint against each and all of the other defendants, this defendant alleges:

I. Alleges and adopts as a part of this cross-complaint, each and every allegation contained within paragraphs numbered from 1 to 26, both inclusive, of the complaint;

II. That this defendant is the owner and in possession of the following described tracts of land, situate in Utah County, State of Utah:

Commencing 3.50 chains east of the northwest corner of the southeast quarter of section 5, township 7, south, range 2 east, Salt Lake Division; thence south 1° west 5 chains; thence south 69° east 16.50 chains; thence south 1° west 1.50 chains; thence south 69° 4.31 chains; thence north 6.00 chains; thence west 14.61 chains to the place of beginning. Area 8.25 acres.

Also, commencing at a point 32.76 chains west of the southeast corner of the northeast quarter of section 1, township 7 south, range 2 east, Salt Lake Meridian, and running thence north 5.16 chains to a creek; thence following the center of said creek east 2.40 chains; thence north 73° 30' east .10 chains; thence north 73° east 7.10 chains; thence north 41° east .10 chains; thence east 5.12 chains; thence south 32° east 1.30 chains; thence south 32° east 2.70 chains; thence north 30° 45' west 17.00 chains; thence west 37.76 chains; thence south 32° 45' east 17.01 chains to the place of beginning. Area 35.71.

Also, commencing at a point 6.01 chains west and 1.00 chain south of the northwest corner of the northeast quarter of section 5, township and range above laid, and running east 35.20 chains; thence north 0.03 chains; thence east 37.00 chains; thence south 0.03 chains to the place of beginning. Area 0.10 acres.

Commencing 16.10 chains north and 2.40 chains west of the southwest corner of the northwest quarter of section 1, township 7 south, range 2 east, Salt Lake Meridian, and running thence east 5.30 chains; thence south 71° 30' east 7.00 chains; thence south 0.50 chains to middle of slough; thence along middle of slough north 75° east 2.60 chains; thence south 72° east 1.60 chains; thence south 25° east 2.90 chains; thence south 34° east 2.50 chains; thence north 32° 30' east 1.10 chains; thence west 0.56 chains; thence north 6.73 chains; thence west 3.60 chains; thence south 2° 45' east 2.00 chains to the place of beginning.

III. That for more than forty-five years last past, this defendant and his predecessors in interest have owned and used one and one-quarter second feet of water for the irrigation of all of the lands hereinbefore described; the irrigation of the said lands having extended throughout each and every year successively of the said period of forty-five years, from the 1st day of April to the 1st day of October; and have owned and used sufficient water for domestic and stock purposes in connection with its ownership and occupancy of the said lands;

IV. Allowing first during the current manufacturing season extending from the 15th day of September to the 15th day of January of the next succeeding year, beginning with the year 1903 and extending without break each successive annual manufacturing season thereafter and until and including the season of 1913-1914, defendant has appropriated and uses a combining flow of five second feet of water in all incidental to the processes of his paper and adhesive plant, situated on the lands hereinbefore described;

V. Alleges that the said waters had their origin in certain springs, supplied from percolating and seepage water, along and flowing in the canal of the Lake Bottom Canal; and that, ordinarily, the said springs have been ample to furnish water for the said lands, but whenever the said springs had failed to furnish the water for irrigation, as hereinbefore stated, then this defendant and its predecessors in interest have been entitled to such proportion of the flowing water of Provo River as was reasonably necessary to irrigate the aforesaid lands, and the water thus supplied from the Provo River has been taken proportionately from the amount of water to which each of the parties, plaintiff and defendant, stand in a certain decree of the Fourth District Court, Utah County, Utah, entitled Provo City, et al., West Union Canal Company, et al. which said decree was filed February 5th, 1902, are entitled, as set forth in the said decree; and allege, further, that the water appropriated and used, as aforesaid, for sugar manufacturing purposes has been derived chiefly from the above described springs, situated along the course and flowing into the said Lake Bottom Canal, but, when the supply from said springs has been inadequate, the deficiency has been drawn from the water flowing in the Provo River;

WILLIAM B. ORR, this defendant, says judgment:

That the defendants, and each of them, may be required to set forth the nature and amount of their respective claims to the water of the Provo River with its tributaries, and that all adverse claim of the parties to this action may be determined by decree of this court; and that by said decree it be adjudged that this defendant is entitled to the use of the water of the said River to the extent and for the purposes set forth in this cross-complaint; and for such other and further relief as may be equitable.

J. L. Parker, George H. Parker, J. C. Clark
Attorneys for the Defendant

Utah-Idaho Sugar Company

STATE OF UTAH)
COUNTY OF SALT LAKE) SS.

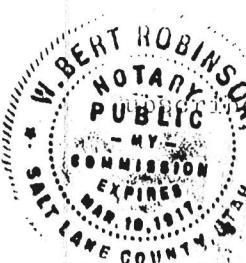
Walter T. Pyper, being first duly sworn, deposes and says:

That he is an officer of Utah-Idaho Sugar Company, one of the defendants in the above entitled action, to-wit, the assistant secretary thereof; that he has read the foregoing answer, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief and as to such he believes it to be true.

Walter T. Pyper

W. Bert Robinson

.. NOTARY PUBLIC ..



No 2888

Provo Reservoir Co.
vs. Ref.

Provo City, et al.

Answer and
Cross Complaint
of aff.
Utah Idaho Sugar Co.

AT PROVO CITY, UTAH

